

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1860.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 143.]

*The Committee on Commerce, to whom was referred the petition of Francis Hüttmann for remuneration for losses sustained in consequence of the illegal proceedings of the collector of the customs at San Francisco, have had the same under careful consideration, and report:*

That it appears from the proof adduced by the petitioner that he arrived at San Francisco on the 15th August, 1848, with the bark Callao, and a valuable cargo, shortly after the discovery of gold in California, and eight days after the treaty of peace with Mexico had been officially published. He was refused an entry by the military officer acting as collector, for reasons which will be fully shown in the letter and report of the Secretary of the Treasury, and the reply of Mr. Hüttmann, accompanying, which the committee submit as a part of their report, and was subjected to a detention of twenty-seven days, during which time a number of other vessels had arrived and entered and supplied the demand for goods. In consequence of this detention the petitioner was unable to sell but part of his cargo, and that at greatly reduced rates, thus suffering much loss and inconvenience.

Believing that the case of the petitioner comes within the spirit of the act of September 28, 1850, which the committee interpret as pledging the government for the payment of actual damages, they think Mr. Hüttmann is entitled to its benefit, and report the accompanying bill for the adjustment of his claim under that act.

TREASURY DEPARTMENT,  
January 31, 1859.

SIR: I have the honor to acknowledge the receipt of your letter of the 24th instant, transmitting the memorials of Francis Hüttmann, esq., of San Francisco, asking the allowance of a claim for the alleged illegal act of Collector Folsom in not allowing him to enter and land a cargo of merchandise with which he arrived at San Francisco in the year 1848, and also for a return of tonnage duty and light money levied on certain vessels which arrived at that port during the year 1849.

With respect to his claim for not being allowed to enter and land the cargo of merchandise brought by him to San Francisco, I have the honor to inclose herewith a copy of the statement of the case, prepared from the papers presented by Hüttmann, by the clerk having charge of the matter, and upon which the decision of the department adverse to the claim was made. You will perceive from the statement that Mr. Hüttmann arrived at San Francisco on the 15th of August, 1848, and not in the year 1849, as stated in the memorial. The receipt for tonnage duties and light money on the bark "Callao," in which the merchandise was imported, is dated in February, 1849, and hence, it is presumed, arises the discrepancy with respect to dates.

With respect to his claim for a return of the tonnage duties and light money levied on certain vessels, it would seem, from the dates of the receipts accompanying the papers, that they were exacted by the collector at San Francisco appointed by the military authorities of the United States, after the treaty of peace with Mexico, but before the organization of the customs authorities under the revenue laws; and as the collector so appointed made no returns to the revenue officers of this department, no opinion can be expressed as to the legality of their exaction or the propriety of their return.

The papers inclosed, with your letter, are herewith returned.

Very respectfully, your obedient servant,

HOWELL COBB,

*Secretary of the Treasury.*

Hon. C. C. CLAY, jr., *Chairman of Committee on Commerce,*  
*United States Senate.*

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#### CLAIM OF FRANCIS HÜTTMAN.

##### *Case stated.*

On the 15th August, 1848, Francis Hüttmann arrived at the port of San Francisco, California, from the port of Callao, Peru, in the Peruvian bark Callao, with an assorted cargo of goods, his own property.

After delivering within twenty-four hours his manifest and ships papers, he presented himself to Captain J. L. Folsom, United States army, who was at that time acting as military collector in San Francisco, a port of Mexico, which had come into American possession by conquest during the war with Mexico, and over which, at that time, the revenue laws of the United States had not been extended.

Captain Folsom refused to admit the vessel to entry, on the ground *that the manifest was not certified by the United States consul at Callao, the port whence the shipment was made.*

Mr. Hüttmann made various propositions to Captain Folsom, with a view of overcoming, if possible, this difficulty; but the latter officer, not being willing to assume any discretionary power beyond his instructions, declined taking himself any further action in the premises, and referred the whole matter to Colonel Mason, United States army, the then governor, who resided at Monterey, for his decision.

On the 19th of August Mr. Hüttmann sailed in the "Callao" for Monterey, and reached that port on the 27th of the same month.

After considerable hesitation, it appears that Governor Mason finally decided, on the 5th of September, to admit the vessel to entry, receiving Mr. Hüttmann's bond that within eight months thereafter, properly authenticated, copies of the invoices should be furnished. This likewise admitted the bark to entry at, and clearance from, any other port or ports of California without further difficulty—the fees, of course, for such entrance and clearance being first paid.

Part of the cargo was disposed of at Monterey, and Mr. Hüttmann, making sail with the remainder, arrived at San Francisco on the 10th of same September, and met with no further obstacle at that custom-house.

In the interim, however, between the 19th of August and 10th of September, other vessels had arrived at San Francisco with large cargoes of merchandise, thereby overstocking the market with goods, and of course greatly depressing their value below the current rates prevailing when the "Callao" first reached the harbor on the 15th of August; Mr. Hüttmann claims that he was *consequently* largely damaged thereby, and claims from the United States the sum of \$106,508 73.

It is not deemed necessary to examine the various items composing this sum so claimed. The *law* of the case is so clear as to require but a simple citation.

During the hostilities with Mexico, and until the United States revenue laws were established over the territory acquired by conquest, duties were collected in the various ports of such territory under and by virtue of a tariff, and regulations accompanying, of a Treasury circular, dated March 30, 1847, which was approved by the then President of the United States.

It is provided in said circular, "That all ports or places \* \* \* on the Pacific ocean \* \* are opened to our commerce, and to that also of all other nations, subject to the regulations and restrictions herein prescribed: First. Within twenty-four hours after the arrival of any vessel, the master must produce to the military or naval officers in command of the port a manifest of the cargo of said vessel;" "which manifest, if the vessel be from a port of the United States, shall be certified by the collector of the port from whence the shipment is made; *if from any port, by the consul or commercial agent of the United States, if any there be*—otherwise, by a consul of any nation at peace with the United States. If no such manifest be produced, the vessel shall be subject to a penalty of one dollar per ton, registry measurement, in addition to the tonnage duty hereinafter described."

The claimant offers no evidence or even averment to show that he ever offered or *tendered* this penalty of one dollar per ton, but expressly states, in his memorial, that he proceeded under the second section of the act of March 1, 1823, and proposed to Captain Folsom that the vessel should be admitted to entry upon Mr. Hüttmann executing bond for the production of properly authenticated invoices.

By reference to the act in question, it will be seen that the admission to entry or appraisement of any goods, wares, or merchandise, *without invoice*, which is required by the statute, is left entirely to the

"*judgment*" of the collector, who is authorized to admit them, if any circumstances connected therewith render it, in his opinion, "*expedient*" so to do. There is nothing mandatory or obligatory upon the collector to admit to entry goods so situated—the whole subject is left to his best discretion.

Mr. Hüttmann *admits that his manifest*, when delivered to the authorities at his first arrival at San Francisco, *was not so certified*, and excuses the omission by the fact that in the month of March, during the year preceding, that is in 1847, he arrived at San Pedro, Upper California, in a foreign schooner, with an assorted cargo, and was permitted by Mr. Alexander, the acting collector at that port, to enter his cargo on the payment of fifteen per cent. duty thereon, according to the cost, as shown by the *original bills of purchase*, and from this he inferred that a similar formality, on any future occasion, would alone be necessary.

Any claim to damage arising from his acting on such an inference is sufficiently answered by the fact that the treasury instructions, under which Captain Folsom was necessarily guided in the performance of his duties, were published March 31, 1847, at Washington, and must of course have reached the Pacific long anterior to June 9, 1848, the date of claimant's sailing from Peru on his last voyage.

The law upon which Mr. Hüttmann now applies to the Treasury Department for relief, is stated by him to be found in the proviso contained in the 4th section of the act of September, 1850, as follows:

"*Provided*, That where any ships or vessels, or any goods, wares, and merchandise, may have been subjected to seizure, or confiscation, or detention, *by any officers of the customs in the collection district of Upper California or the district of Oregon*, prior to the passage of this act, and it shall be made to appear to the satisfaction of the Secretary of the Treasury that the owner or owners of any such ships or vessels, or the owner or owners or importers of any such goods, wares, and merchandise, has, or have, sustained damage or loss by reason of any *improper seizure, confiscation, or detention thereof*, the said Secretary is hereby authorized to extend such relief in the respective cases as he may deem just and proper."

There is, however, nothing contained in this proviso applicable to the claimant's case, from the fact that the collection district of Upper California was not established nor officers of the customs appointed until March 3, 1849, to take effect on the 10th March thereafter.

The acts of the military collector, under and by reason of which Mr. Hüttmann complains he received damage, occurred in August and September, 1848; the class of cases referred to in the proviso, and for which relief is to be sought from the Secretary of the Treasury, is necessarily and only embraced in the period of time between the 10th of March, 1849, and September 28, 1850, being the dates respectively of the creation of the collection district and the passage of the relief proviso.

If it were necessary to extend the argument, it will be seen that the act in question grants relief in cases of seizure, confiscation, or detention.

It is not pretended that the "Callao" or any portion of her cargo

was either seized or confiscated, neither can any improper detention be alleged. There was a simple refusal of the military officer to admit to entry. The vessel and owner were at full liberty to proceed elsewhere, which was availed of by Mr. Hüttmann's taking his cargo to Monterey and disposing there of such part as he could sell to best advantage.

WM. HEMPHILL JONES,  
*Clerk Treasury Department.*

MAY 21, 1857.

*Remarks in reply to the report made by the Treasury Department in the claim of Francis Hüttmann, in the case of the bark "Callao."*

WASHINGTON, February 12, 1859.

The treaty of peace with Mexico was concluded on the 31st May, 1848, by which Upper California became part and parcel of the United States, and it was no fault of mine that it was not at once made by Congress into a collection district; anyhow, *my existing right to enter my cargo on arrival, and in time of peace, under the United States tariff*, could not thereby be abrogated or affected in any way whatever; and although the honorable Secretary of the Treasury speaks in his report of Captain Folsom as a *military* collector, he could be so no longer, after the 7th August, 1848, the treaty of peace with Mexico being promulgated in California on that day by Governor Mason, and especially communicated to Captain Folsom, in an official letter, written by H. W. Halleck, the then secretary of state of California, (voucher K K,) in which he says: "The tariff of duties for the collection of military contributions will *immediately* cease, and the revenue laws and tariff of the United States will be established in its place." The "revenue must be collected in the same currency as in any other port of the United States;" by these words I opine California was created into a collection district for all *intents and purposes*, and Captain Folsom could henceforth act no longer as military, but solely as civil collector; for peace had been declared, and the United States revenue laws extended over the country by the above proclamation of Governor Mason, all of whose acts were subsequently approved by government.

I have only now discovered when Captain Folsom referred me to the act of March 1, 1823, stating it was the *only* law he had on the subject to guide him, that such assertion was not only not founded in truth, but was a glaring unmitigated falsehood; for the letter of the 1st of August, 1848, (see voucher K K,) addressed to Collector Folsom by the before mentioned secretary of state of California, H. W. Halleck, states: "From the difficulty or rather impossibility of ascertaining the value of this gold dust, the governor authorizes you to receive the *export duty* in kind—that is, taking the required per centage out of each lot of gold dust exported." Now, sir, the treasury instructions of 30th March and 16th November, 1847, were the only revenue laws that ever imposed any *export duty* on gold and silver, and positive proof is therefore afforded, as the collector was in the custom of levying the export duty, that said regulations were at the time in his possession,



and acted upon by him when I arrived with the "Callao," on the 15th August, 1848, and the demanding of the penalties for non-production of certified manifest and invoices *was as much his duty as the exaction of the documents themselves*, for it was not left to *his discretion* by those regulations *to admit me or not*, on the contrary the law being peremptory, *required* him to admit my cargo to entry, either with certified invoices or without, and all he had to do was to impose the penalty on entering the cargo! But in proceeding thus, he must have admitted my cargo to entry, and is exactly what he did not want to do, for reasons explained in my general memorial, (page 4,) and besides alluded to by the citizens and traders of San Francisco in their petition in my behalf to Governor Mason, (voucher G.) Moreover by Captain Folsom, asserting to me that the act of March 1, 1823, was the *only* law he had on the subject to guide him, he led me astray, thereby causing me to claim in my general memorial to the Secretary of the Treasury, under an act which was not in force at the time of my arrival, although under the general collection laws, I was still entitled to enter my cargo by my oath before any collector!

The treasury instructions of the 30th March, 1847, being admittedly in force and operation at the time of the "Callao's" arrival at San Francisco, under which instructions the honorable Secretary of the Treasury maintains Collector Folsom was necessarily guided, and, as it is objected that I did not *tender* the penalty of one dollar per ton for non-production of *certified manifest*, and also admitted that, when delivered to the authorities on my first arrival, the manifest *was not so certified*, I beg to state that the honorable Secretary has evidently mistaken me for the master of the vessel, and overlooked the important fact that the certified manifest of the entire cargo is a document which did not concern me at all, as merely one of the shippers of the cargo in the vessel, but is a document exclusively appertaining to the *master*, which, according to section first of said instructions, had to be presented by *him* to the military or naval officers within twenty-four hours after arrival; the master in this case in command of the vessel was Captain John Stephens, and if he presented an informal document, it would have been the collector's duty to impose upon *him* the lawful penalty of one dollar per register ton; but he was wrong in refusing to me the entry of my cargo on that ground, for, as *owner* of the goods, I had a perfect right to make oath to my true, not certified, invoice before any collector; moreover the penalty was never demanded from the master or even from myself; I satisfied all the pecuniary demands the collector ever made upon me, even to paying the tonnage and light dues, (see voucher I,) although illegally collected, Peruvian vessels being by treaty exempted from those imposts.

The honorable Secretary of the Treasury says in the report: "Mr. Hüttmann made various propositions to Captain Folsom with a view of overcoming, if possible, this difficulty, (the want of certified manifest,) but the latter officer, not being willing to assume any discretionary power beyond his instructions, declined," &c., &c. In reply I beg to say, that the *only* proposition I made to Captain Folsom in consequence of his stating that the law of March 1, 1823, was the *only one* he had to guide him, and in order to save any responsibility there might be, was

to give satisfactory bonds for the subsequent production of my *certified invoices*, and had no reference whatever to the certified manifest of the captain's. And as for Captain Folsom "not being willing to assume any discretionary powers beyond his instructions," I should not have wanted him to do so, for sections first and tenth of the very treasury regulations of March 30, 1847, provided for my case, and the use of discretionary powers beyond them did not at all rest with the collector, and was a mere fancied responsibility.

The honorable Secretary in his report on my case also implies, in reference to the supplemental collection act of March 1, 1823, (although not then in force,) that I presented *no* invoice. This charge I must respectfully repel, because I presented to Captain Folsom, the collector, not only my true invoice, (see my letter to Governor Mason of 28th August, 1848, voucher H; also affidavit of T. M. Leavenworth, voucher E; and the testimony of sundry other witnesses,) but also tendered to him the *original bills of parcels* by which I had purchased the cargo, and which now accompany my claim, (see vouchers O.) By my true invoice, as first presented to Collector Folsom, I afterwards, when admitted, paid my import duties according to the United States tariff, and if there was any error or informality in my not having *certified* invoices, the proper course for Collector Folsom to have pursued was to have demanded the penalty therefor, according to the tenth section of the regulations of March 30, 1847, then in force; but he had no right to refuse entry to my cargo! But the fact is, there was no error or informality whatever, for, as *owner* of the goods, I was not obliged to produce a certified copy at all; that is, a copy sworn to by me before a consul at the port of departure, which is only required when the owner does not accompany the goods, and the oath to the entry of importation is made by an agent; but as owner of the goods it was immaterial whether my oath to the true cost was made before the consul at the port of departure or before the collector at the port of entry, which latter mode is in daily practice at all the ports of entry in the United States, the intention of the law being in all cases to have the oath of the real owner, and not to allow any frauds on the revenue by the oath which might be given in good faith by an agent importing the goods, but who is of course unable to swear, as of his own knowledge, to the real cost of the goods, and can only do so to the best of his knowledge and belief.

The honorable Secretary of the Treasury in his report makes a virtue "of my having been at full liberty to proceed elsewhere with my cargo, and that I availed myself of it by going to Monterey." In reply, I beg to say that my so doing was no voluntary act of mine, but that I was *forced* to leave San Francisco, my port of destination, and at that time, for me, *the most splendid market in the world*—(see the citizens' petition, in my behalf, to Governor Mason, voucher G)—by the continued refusal of Collector Folsom to permit my cargo to entry. The sole object of my going to Monterey was to procure from the superior authority of Governor Mason an order to admit my cargo to entry; and the moment I had procured it I hastened back to San Francisco without the least delay. But to obtain said object I had to proceed there in the vessel as the most expeditious way, there being at

that time no steamers, stages, or other means of transit on the coast. I also had to incur the risk of the sea voyage there and back for vessel and cargo and other expenses incidental thereto !

The "Callao" being forced to go to Monterey, *in charge of a custom-house officer* named Hubbard, placed on board by Collector Folsom, did not this act virtually amount to a seizure of my cargo, at least in so far as it limited my free action to proceed where I pleased, and prevented my going to any other port except Monterey ? It also states in the report "there was merely a simple refusal of the military officer to admit to entry," but this unwarrantable refusal ended to me in a delay of twenty-seven days, the arrival of several cargoes *ad interim*, and ruinous losses, and became thus to me most serious in its consequences !

My claim originated on the 15th August, 1848, and not in 1849, as erroneously stated in the memorial to Congress, since corrected, but the receipt for tonnage duties and light money on the bark "Callao," dated in *February*, 1849, belongs to my separate claim for illegally collected tonnage and light dues paid in 1849 on Danish, Peruvian, and German vessels, and refers to a *subsequent* voyage of the Peruvian bark "Callao," and the mistake was no doubt caused by a clerical error in the department. The claim for tonnage and light dues, amounting to \$124 80, paid on the Callao's *first* voyage in 1848, is included in my general claim on account of the Callao's detention, for the receipt of which \$124 80, included in my first payment of import duties at Monterey, on the 5th September, 1848, see voucher I.

If the honorable committee desire any explanations on any other point of my claim I shall be happy to render them.

Respectfully submitted,

F. HÜTTMANN.

The Hon. COMMITTEE ON COMMERCE,  
*United States Senate.*